

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

**CHARITABLE DAF FUND, L.P.
and CLO HOLDCO, LTD.,
*directly and derivatively,***

Plaintiffs,

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**HIGHLAND CAPITAL MANAGEMENT,
L.P., HIGHLAND HCF ADVISOR, LTD.,
and HIGHLAND CLO FUNDING, LTD.,
*nominally.***

Defendants.

[illegible]

CAUSE NO. 3:21-cv-00842-B

**APPENDIX IN SUPPORT OF PLAINTIFFS' RESPONSE TO HIGHLAND CAPITAL
MANAGEMENT, L.P.'S MOTION FOR AN ORDER TO ENFORCE THE ORDER OF
REFERENCE AND CROSS-MOTION**

App'x No.	Description	Bates Range
1	Declaration of Jonathan Bridges	APP_002
2	Excerpts from June 8, 2021 Transcript of Hearing of Show Cause, Motion to Modify Order Authorizing Retention of James Seery, and Motion for Order Further Extending the Period Within Which Debtor May Remove Actions	APP_003 - 019
3	DAF/CLO Holdco Structure Chart introduced as Exhibit 25 in Hearing of Show Cause, Motion to Modify Order Authorizing Retention of James Seery, and Motion for Order Further Extending the Period Within Which Debtor May Remove Actions	APP_020 - 022

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, June 8, 2021
) 9:30 a.m. Docket
Debtor.)
) - SHOW CAUSE HEARING (2255)
) - MOTION TO MODIFY ORDER
) AUTHORIZING RETENTION OF
) JAMES SEERY (2248)
) - MOTION FOR ORDER FURTHER
) EXTENDING THE PERIOD WITHIN
) WHICH DEBTOR MAY REMOVE
) ACTIONS (2304)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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23 Proceedings recorded by electronic sound recording;
24 transcript produced by transcription service.
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Patrick - Direct

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1 our witness stand and I'll swear you in. Please raise your
2 right hand.

3 (The witness is sworn.)

4 THE COURT: All right. Please take a seat.

5 MARK PATRICK, DEBTOR'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. MORRIS:

8 Q Good afternoon, Mr. Patrick.

9 A Good afternoon.

10 Q Can you hear me okay?

11 A Yes, I can.

12 Q Okay. You have before you several sets of binders.

13 They're rather large. But when I deposed you on Friday, we
14 did that virtually. Now, I may direct you specifically to one
15 of the binders or one of the documents from time to time, so I
16 just wanted you to know that those were in front of you and
17 that I may be doing that.

18 Mr. Patrick, since March 1st, 2001 [sic], you've been
19 employed by Highland Consultants, right?

20 A I believe the name is Highgate Consultants doing business
21 as Skyview Group.

22 Q Okay. And that's an entity that was created by certain
23 former Highland employees, correct?

24 A That is my understanding, correct.

25 Q And your understanding is that Mr. Dondero doesn't have an

Patrick - Direct

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1 Q Okay. Let's talk for a little bit about the line of
2 succession for the DAF and CLO Holdco. Can we please go to
3 Exhibit 25, which is in the other binder? It's in the other
4 binder, sir.

5 (Pause.)

6 Q I guess you could look on the screen or you can look in
7 the binder, whatever's easier for you.

8 A Yeah. I prefer the screen. I prefer the screen.

9 Q Okay.

10 A It's much easier.

11 Q All right. We've got it in both spots. But do you have
12 Exhibit 25 in front of you, sir?

13 A Yes, I do.

14 Q All right. Do you know what it is?

15 A This is the organizational chart depicting a variety of
16 charitable entities as well as entities that are commonly
17 referred to the DAF. However, when I look at this chart, I do
18 not look at and see just boxes, what I see is the humanitarian
19 effort that these boxes represent.

20 MR. MORRIS: Your Honor, may I interrupt?

21 THE COURT: You may.

22 MR. MORRIS: Okay.

23 BY MR. MORRIS:

24 Q I appreciate that, and when your lawyers get up to ask you
25 questions, I bet they'll want to know just what you were about

Patrick - Direct

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1 to tell me. But I just want to understand what this chart is.

2 This chart is the DAF, CLO Holdco, structure chart. Correct?

3 A Correct.

4 Q Okay. And you were personally involved in creating this
5 organizational structure, correct?

6 A I -- yes.

7 Q Okay. And from time to time, the Charitable DAF Holdco
8 Limited distributes cash to the foundations that are above it.
9 Correct?

10 A Correct.

11 Q All right. I want to talk a little bit more specifically
12 about how this happens. The source of the cash distributed by
13 Charitable DAF Holdco Limited is CLO Holdco, Ltd., that
14 entity, the Cayman Islands entity near the bottom. Correct?

15 MR. ANDERSON: Your Honor, I have an objection.
16 Completely irrelevant. I'm objecting on relevance grounds.
17 This has nothing to do with the contempt proceeding. We've
18 already gone over that he authorized the filing of the
19 complaint, that he authorized the filing of the motion to
20 amend. It's all in the record. This is completely irrelevant
21 at this point.

22 THE COURT: Okay. Relevance objection. Your
23 response?

24 MR. MORRIS: I believe that it's relevant to the
25 Debtor's motion to hold Mr. Dondero in contempt for pursuing

Patrick - Direct

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1 transaction, because I was not a part of it -- that by Mr.
2 Dondero holding that GP interest, that it would be -- the
3 Plaintiffs, if you will, would be an affiliate entity for
4 regulatory purposes, and so he advised that if he -- if Mr.
5 Dondero transferred his GP interest to Mr. Scott, it would no
6 longer be an affiliate, is my recollection.

7 Q Okay. You didn't appoint Mr. Scott, did you?

8 A No.

9 Q That was Mr. Dondero. Is that right?

10 A Yes.

11 Q Okay. Let's go to 2021. Let's come back to the current
12 time. Sometime in February, Mr. Scott called you to ask about
13 the mechanics of how he could resign. Correct?

14 A That is correct.

15 Q But the decision to have you replace Mr. Scott was not
16 made until March 24th, the day you sent an email to Mr. Scott
17 with the transfer documents. Correct?

18 A That is correct.

19 Q And it's your understanding that he could have transferred
20 the management shares and control of the DAF to anyone in the
21 world. Correct?

22 A Correct.

23 Q That's what the docu... that he had the authority under
24 the documentation, as you understood it, to freely trade or
25 transfer the management shares. Correct?

Patrick - Direct

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1 A Wait. Now, let's be precise here.

2 Q Okay.

3 A Are you talking about the GP interests or the management
4 shares held by Charitable DAF Holdco, Ltd.?

5 Q Let's start with the management shares. Can you explain
6 to the Court what the management shares are?

7 MR. ANDERSON: Your Honor? Hang on one second. Your
8 Honor, I want to object again on relevance. We're going way
9 beyond the scope of the contempt issue, whether or not --

10 MR. MORRIS: This is about control.

11 MR. ANDERSON: -- the motion to amend somehow
12 violated the prior order of this Court. Getting into the
13 management structure, transfer of shares, that's way outside
14 the bounds. I object on relevance.

15 THE COURT: Okay. Relevance objection?

16 MR. MORRIS: Your Honor, they have probably 30
17 documents, maybe 20 documents, on their exhibit list that
18 relate to management and control. I'm asking questions about
19 management and control. Okay? This is important, again, to
20 (a) establish his authority, but (b) the circumstances under
21 which he came to be the purported control person.

22 THE COURT: Okay. Overruled. Go ahead.

23 THE WITNESS: It might be helpful to look at the
24 organizational chart, but if not -- but I'll describe it to
25 you again. With respect to the entity called --

Patrick - Direct

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1 MR. MORRIS: Hold on one second. Can we put up the
2 organizational chart again, Ms. Canty, if you can? There you
3 go.

4 THE WITNESS: Okay. So with respect to the
5 Charitable DAF Holdco, Ltd., it is my understanding that Mr.
6 Scott, he organized that entity when he was the independent
7 director of the Charitable Remainder Trust, and he caused the
8 issuance of the management shares to be issued to himself.
9 And then those are, again, noneconomic shares, but they are
10 control shares over that entity.

11 And I think, to answer your question, is -- it -- he alone
12 decides who he can transfer those shares to.

13 BY MR. MORRIS:

14 Q Do I have this right, that whoever holds the noneconomic
15 management shares has the sole authority to appoint the
16 representatives for each of the Charitable DAF entities and
17 CLO Holdco? It's kind of a magic ticket, if you will?

18 A It -- I think there's a -- the answer really is no from a
19 legal standpoint, because Charitable DAF Holdco is a limited
20 partner in Charitable DAF Fund, LP, so it does not have
21 authority -- authority under all -- the respective entities
22 underneath that. It could cause a redemption, if you will, of
23 Charitable DAF Fund. And so, really, the authority -- the
24 trickle-down authority that you're referencing is with respect
25 to his holding of the Charitable DAF GP, LLC interest. It's a

Patrick - Direct

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1 member-managed Delaware limited liability company. And from
2 that, he -- that authority kind of trickles down to where he
3 can appoint directorships.

4 Q All right. I think I want to just follow up on that a
5 bit. Which entity is the issuer of the manager shares, the
6 management shares?

7 A Yeah, the -- per the organizational chart, it is accurate,
8 it's the Charitable DAF Holdco, Ltd. which issued the
9 management shares to Mr. Scott.

10 Q Okay. And that's why you have the arrow from Mr. Scott
11 into that entity?

12 A Correct.

13 Q And do those -- does the holder of the management shares
14 have the authority to control the Charitable DAF Holdco, Ltd.?

15 A Yes.

16 Q Okay. And as the control person for the Charitable DAF
17 Holdco, Ltd., they own a hundred -- withdrawn. Charitable DAF
18 Holdco Limited owns a hundred percent of the limited
19 partnership interests of the Charitable DAF Fund, LP.

20 Correct?

21 A Correct.

22 Q And so does the holder of that hundred percent limited
23 partnership interest have the authority to decide who acts on
24 behalf of the Charitable DAF Fund, LP?

25 A I would say no. I mean, you know, just -- I would love to

Patrick - Direct

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1 read the partnership agreement again. But I, conceptually,
2 what I know with partnerships, I would say the limited partner
3 would not. It would be through the Charitable DAF GP, LLC
4 interest.

5 Q The one on the left, the general partner?

6 A The general partner.

7 Q I see. So when Mr. Scott transferred to you the one
8 hundred percent of the management shares as well as the title
9 of the managing member of the Charitable DAF GP, LLC, did
10 those two events give you the authority to control the
11 entities below it?

12 A Yes.

13 Q Thank you. And so prior to the time that he transferred
14 those interests to you, is it your understanding that Mr.
15 Scott had the unilateral right to transfer those interests to
16 anybody in the world?

17 A Yes.

18 Q Okay. And you have that right today, don't you?

19 A Yes, I do.

20 Q If you wanted, you could transfer it to me, right?

21 A Yes, I could.

22 Q Okay. But of all the people in the world, Mr. Scott
23 decided to transfer the management shares and the managing
24 member title of the DAF GP to you, correct?

25 A Restate that question again?

Patrick - Direct

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1 Q Of all the people in the world, Mr. Scott decided to
2 transfer it to you, correct?

3 A Yeah. Mr. Scott transferred those interests to me.

4 Q Okay. And you accepted them, right?

5 A Yes.

6 Q You're not getting paid anything for taking on this
7 responsibility, correct?

8 A I am not paid by any of the entities depicted on this
9 chart.

10 Q And Mr. Scott used to get \$5,000 a month, didn't he?

11 A I believe that's what he testified to.

12 Q Yeah. But you don't get anything, right?

13 A Correct.

14 Q In fact, you get the exact same salary and compensation
15 from Skyview that you had before you became the authorized
16 representative of the DAF entities and CLO Holdco. Correct?

17 A Correct.

18 MR. MORRIS: Okay. Your Honor, if I may just take a
19 moment, I may be done.

20 THE COURT: Okay.

21 (Pause.)

22 MR. MORRIS: Your Honor, I have no further questions.

23 THE COURT: All right. Pass the witness. Any
24 examination of the witness?

25 CROSS-EXAMINATION

1 Q So did Mr. Dondero both have the control shares of the GP,
2 LLC and DAF Holdco Limited?

3 A No, I believe not. I believe he only held the Charitable
4 DAF GP interest and that Mr. Scott at all times held the
5 Charitable DAF Holdco, LTD interest, until he decided to
6 transfer it to me.

7 Q Can you just tell us how Mr. Scott came to hold the
8 control shares of the Charitable DAF Holdco, LTD?

9 A When he was the independent trustee of the Charitable
10 Remainder Trust, he caused that -- the creation of that
11 entity, and that's how he became in receipt of those
12 management shares.

13 Q And does the Charitable DAF GP, LLC have any control over
14 Charitable DAF Fund, LP's actions or activities?

15 A Yes, it does.

16 Q What kind of control is that?

17 A I would describe complete control. It's the managing
18 member of that entity and can -- and effectively owns, you
19 know, the hundred percent interest in the respective
20 subsidiaries, and so the control follows down.

21 Q And when did Mr. Scott replace Mr. Dondero as the GP --
22 managing member of the GP?

23 A Well, I think as the -- and Mr. Morris had shown me with
24 respect to that transfer occurring on March 2012.

25 Q So nine years ago?

Patrick - Cross

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1 A Yes.

2 Q Does Mr. Dondero today exercise any control over the
3 activities of the DAF Charitable -- the Charitable DAF, GP or
4 the Charitable DAF Holdco, LTD?

5 A No.

6 Q Is he a board member of sorts for either of those
7 entities?

8 A No.

9 Q Is he a board members of CLO Holdco?

10 A No.

11 Q Does he have any decision-making authority at CLO Holdco?

12 A None.

13 Q The decision to authorize the lawsuit and the decision to
14 authorize the motion that you've been asked about, who made
15 that authorization?

16 A I did.

17 Q Did you have to ask for anyone's permission?

18 A No.

19 MR. SBAITI: No more questions, Your Honor.

20 THE COURT: Okay. Any -- I guess Mr. Taylor, no.

21 All right. Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. MORRIS:

24 Q Since becoming the authorized representative of the
25 Plaintiffs, have you ever made a decision on behalf of those

Patrick - Cross

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1 entities that Mr. Dondero disagreed with?

2 A I have made decisions that were adverse to Mr. Dondero's
3 financial -- financial decision. I mean, financial interests.
4 Whether he disagreed with them or not, I don't -- he has not
5 communicated them to me. But they have been adverse, at least
6 two very strong instances.

7 Q Have you ever -- have you ever talked to him about making
8 a decision that would be adverse to his interests? Did he
9 tell -- did --

10 A I didn't -- I don't -- I did not discuss with him prior to
11 making the decisions that I made that were adverse to his
12 economic interests.

13 MR. MORRIS: Okay. No further questions, Your Honor.

14 THE COURT: Any further examination? Recross on that
15 redirect?

16 MR. ANDERSON: No further questions.

17 MR. SBAITI: No further questions, Your Honor.

18 MR. ANDERSON: Sorry.

19 THE COURT: Nothing?

20 MR. ANDERSON: I think we're good.

21 THE COURT: Okay. I have one question, Mr. Patrick.
22 My brain sometimes goes in weird directions.

23 EXAMINATION BY THE COURT

24 THE COURT: I'm just curious. What are these Cayman
25 Island entities, charitable organizations formed in the Cayman

1 THE COURT: I guess I'll see you Thursday on the
2 WebEx. Thank you.

3 THE CLERK: All rise.

4 (Proceedings concluded at 6:00 p.m.)

5 --oOo--

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CERTIFICATE

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

06/09/2021

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT 2

EXHIBIT 25

DAF/CLO Holdco Structure Chart

